

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
ST. LOUIS-SAN FRANCISCO RAILWAY**

DISPUTES.—

"Claim of General Committee of The Order of Railroad Telegraphers in behalf of agent at Southwest City, Missouri, for pay for one hour overtime worked 5:00 p. m. to 6:00 p. m., May 14, 1927; a call for two hours worked 5:00 p. m. to 7:00 p. m., on Sunday, May 15, 1927, and two hours overtime worked 5:00 p. m. to 7:00 p. m., May 16, 1927, account performing necessary work, such as billing and advising Frisco Trainmaster by wire, to insure prompt forwarding of carload express shipments of strawberries."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

The railroad station agent at Southwest City, Missouri, is required by the Carrier, under the terms of the Express Operations Agreement between the Carrier and Railway Express Agency, Inc., to serve as agent for the Express Company in the railroad station at Southwest City.

On May 14, 1927, a week day, carload express shipments of strawberries were delivered at his station for prompt movement. This shipment of highly perishable food required the agent's immediate attention to arrange for prompt movement and billing, causing him to remain continuously on duty for one hour in excess of his assigned eight hour tour of duty.

On May 15, 1927, a Sunday, on which day the agent is not assigned to work, similar shipments of strawberries were delivered at his station for prompt handling. The shipper notified the agent at his home that these shipments were ready for movement. The agent reported for duty on this day at 5:00 p. m. and worked until 7:00 p. m. in arranging and billing this movement by express.

On May 16, 1927, a week day, similar shipments were delivered for express movement which likewise required the agent to remain continuously on duty for two hours in excess of his eight hour tour of duty.

Claim for payment as above set forth was made by the employees. The Carrier declined payment.

The Agent is the employee of the Railroad Company. He is not the employee of the Express Company, but merely performs services for the latter on a commission. These commissions are by express terms of the Agreement (See Article XIV), a part of the agent's compensation for his services to the Railroad, and the amount of his wages from the Railroad are determined (subject to a certain minimum) by taking into account the amount of probable commissions. Therefore, when the agent handles express he is doing what the Railroad Company contemplated and is benefiting the Railroad Company as well as the Express Company.

Paragraph 7, Article II of Telegraphers' Schedule Agreement provides:

"(7) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis. Employees shall not be required to work more than two (2) hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid up to thirty (30) minutes. Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

The question is whether the services performed in this case outside of assigned working hours entitle the agent to extra compensation under the foregoing rule. The work was work which had to be performed when it was performed. It consisted of handling perishable fruits. The rules of the Railroad (see particularly Rules 1060 and 1265 of the Transportation Department of the Railroad) make it the duty of agents to handle perishable property in such a way as to prevent its spoiling or injury. The evidence indicates that there were in effect at the time of the services in question, written instructions from the Trainmaster to the agents to telegraph him before midnight each day information regarding the carloads of fruits and vegetables loaded on that day. If the agent in this case followed these instructions he would have had to send his wire after the regular working hours and on Sunday because the perishable fruit arrived and had to be handled after working hours and on Sunday. It may be assumed that the agent complied with his instructions in the absence of a contrary showing, but the issue is immaterial because it is clear that the agent would have been held responsible by his employer for failure to handle the property when it arrived, and that in handling it he was obligated to do what his employer expected him to do. Under these circumstances he should be compensated by his employer for extra time spent. See U. S. Railroad Labor Board decisions No. 3956 (docket 4573) and 3204 (docket 3300), which are in point and sustain the conclusion herein arrived at.

AWARD

Claim sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois this 13th day of March 1936.